

## Memorandum

**To:** DEPUTY DISTRICT DIRECTORS, Construction  
SENIOR CONSTRUCTION ENGINEERS  
RESIDENT ENGINEERS

**Date:** March 5, 2002

**File:** Division of Construction  
CPD 02-1

**From:** DEPARTMENT OF TRANSPORTATION  
DIVISION OF CONSTRUCTION - MS 44

**Subject:** Waivers of Buy America Requirements

The purpose of this memorandum is to describe the process for obtaining a waiver of the Buy America requirements. These requirements are contained within the Code of Federal Regulations (23CFR635.410) and apply to all Federal Aid projects.

Section 3-605, "Certificates of Compliance," of the *Construction Manual* describes the Buy America requirements. A project specific exemption to the Buy America requirements is allowed if the cost of such materials used does not exceed one-tenth of 1 percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. This exemption applies as a one-time total exemption for each contract, not for each purchase. However, the *Construction Manual* does not explain the process for obtaining a project specific waiver of the Buy America requirements in excess of the specified exemption amount.

The Buy America waiver provisions allow the Federal Highway Administration (FHWA) to approve a waiver under two conditions:

- (i) The application of those provisions would be inconsistent with the public interest; or
- (ii) Steel and iron materials/products are not produced in the United States in sufficient and reasonably available quantities that are of a satisfactory quality.

To obtain a waiver of the Buy America requirements for a project, the following process must be followed:

1. The contractor submits a written request to the resident engineer to waive the Buy America requirements.
2. The resident engineer, after consulting with the construction engineer and construction manager, prepares a written request to waive the requirements, accompanied with supporting information, and obtains concurrence on the request from the construction field coordinator, Division of Construction. After obtaining concurrence from the coordinator, the resident engineer submits the request to the deputy district director, construction for signature.

3. The deputy district director, construction submits the request to the FHWA California Division Administrator. The request must be submitted to FHWA at least three weeks in advance to allow sufficient time for proper review and action.

In addition to requests for project specific waivers of the Buy America requirements, the Department may also request general waivers for certain materials or products, or waivers for specific geographic areas, or a combination of both, depending on the circumstances. These requests must also be submitted to the FHWA California Division Administrator for approval.

If you have any questions regarding this process, please call Scott Jarvis, chief, Office of Contract Management at (916) 651-6284.

Original Signed by:

ROBERT PIEPLOW  
Chief  
Division of Construction

c: SJarvis

RS:sf